NEVADA DIVISION OF WILDLIFE, ET AL.
v.
BUREAU OF LAND MANAGEMENT

IBLA 96-164 Decided August 25. 1998

Appeal from a decision by Administrative Law Judge Ramon M. Child affirming a decision by the Sonoma-Gerlach Resource Area Manager, Bureau of Land Management, establishing the carrying capacity for the Buffalo Hills Allotment and apportioning the carrying capacity between livestock and wild horses. N2-93-14 and N2-93-17.

Affirmed.

1. Administrative Practice--Administrative Procedure: Decisions

It is incumbent upon BLM to ensure that its decision is supported by a rational basis which is set out in the written decision and demonstrated in the administrative record accompanying the decision. Parties affected by a BLM decision deserve a reasoned and factual explanation of the rationale for the decision and must be given a basis for understanding it and accepting it or, alternatively, appealing and disputing it. However, when the record demonstrates that the appellant was able to overcome any difficulty it may have initially encountered when BLM failed to present an adequate explanation of the basis for its decision and presented an informed and organized appeal, the Board will not find that the appellant has been unduly prejudiced by BLM's initial omission.

2. Grazing Permits and Licenses: Adjudication--Grazing Permits and Licenses: Appeals--Grazing Permits and Licenses: Hearings--Rules of Practice: Appeals: Burden of Proof

The Bureau enjoys broad discretion in determining how to adjudicate and manage grazing preferences, and, under 43 C.F.R. § 4.478(b), a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 C.F.R.

Part 4100. A BLM decision may be regarded as arbitrary, capricious, or inequitable only when it is not supported by any rational basis, and the burden is on the objecting party to show by a preponderance of the evidence that the decision is unreasonable or improper. Therefore, a BLM determination of the carrying capacity of an allotment will not be disturbed absent positive evidence of error.

3. Grazing Permits and Licenses: Adjudication--Grazing Permits and Licenses: Appeals--Grazing Permits and Licenses: Hearings--Wild Free-Roaming Horses and Burros Act

A BLM decision apportioning the carrying capacity of an allotment between livestock and wild horses will be affirmed when an appellant urges another course of action but does not demonstrate that BLM's allocation is unreasonable.

APPEARANCES: C. Wayne Howle, Esq., Deputy Attorney General, State of Nevada, Carson City, Nevada, for Appellants; John R. Payne, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Nevada Division of Wildlife and the Nevada Commission for the Preservation of Wild Horses (referred to collectively as the State) have appealed the November 22, 1995, Decision issued by Administrative Law Judge Ramon M. Child, affirming a February 9, 1993, Multiple Use Decision issued by the Sonoma-Gerlach Resource Area Manager, Bureau of Land Management (BLM or Bureau), establishing the carrying capacity for the Buffalo Hills Allotment and apportioning the carrying capacity between livestock and wild horses. 1/

The Buffalo Hills Allotment contains 461,739 acres (431,006 acres of public land and 30,733 acres of private land) near Gerlach, Nevada. (Ex. A-6, at 1.) Approximately 2,493 acres of wetland riparian habitat (less than 1 percent of the allotment acreage), and additional streambank riparian habitat are found in the allotment. (Ex. A-6, at 56; Tr. 27.)

In July 1982, BLM issued a land use plan for the Sonoma-Gerlach Resource Area, addressing, among other things, livestock and wild horse use of the Buffalo Hills Allotment. 2/ The Sonoma-Gerlach land use

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1/ The State also filed a request for oral argument which BLM opposed. The issues raised by this appeal have been more than adequately briefed and we find no need for oral argument.

2/ At that time, the Buffalo Hills Allotment was two separate allotments. They have since been merged, and for convenience, the two allotments will be referred to as "the allotment."

plan established the base grazing levels for the allotment at the then existing active livestock preference and the extant wild horses numbers. (Ex. A-1, at 1.) At the time, approximately 14,000 animal unit months (AUM's) were allocated to livestock (Tr. 198-99), and 7,164 AUM's were allocated to the 597 wild horses then on the allotment. (Ex. A-2, at 5.) The Sonoma-Gerlach land use plan provided for adjustments to grazing use, based upon monitoring results, at the end of the 3rd and 5th years of grazing. (Ex. A-1, at 2.) If any adjustments in addition to the 5th year adjustments were required, the plan directed BLM to "adjust livestock, wild horses, and wildlife proportionately based on forage availability." Id. It also set general goals and guidelines for management of the resource area, including the allotment. (Tr. 194.)

In November 1982, BLM canceled the permits held by the largest grazing permittee on the allotment. The 11,112 AUM's included in the canceled permits were not reallocated. (Ex. A-2, at 2.)

In 1987, BLM developed an allotment management plan (AMP) for the Buffalo Hills Allotment as a part of the implementation of the Sonoma-Gerlach land use plan. This AMP set out an intensive grazing management system for the allotment. (Ex. A-2.) A primary feature of the AMP was the establishment of a four pasture rest-rotation grazing system, in which two of the four pastures were rested for 2 consecutive years while the other two were grazed, and then grazed for 2 consecutive years while the other two pastures were rested. (Ex. A-2, at 12-15.) This rotation system was designed to rest forage and key species during the critical growth season, improve livestock distribution, and protect meadows and riparian areas. (Ex. A-2, at 8.) In response to the recognized livestock distribution problems resulting from heavy use in the vicinity of stock waters and riparian areas and the lack of use in lower country, the AMP further directed that livestock be distributed and controlled by herders on horseback and by the strategic placement of mineral supplements during the grazing season to achieve even distribution and proper utilization levels. (Ex. A-2, at 17.) The AMP also incorporated a monitoring plan and methods for calculating the allotment's potential stocking level. 3/ This information and other monitoring data were used to determine the carrying capacity for the allotment. (Ex. A-2, Monitoring Plan, at 7.)

On November 2, 1988, BLM and the Buffalo Hills Allotment permittees entered into an allotment agreement adopting the four pasture rest-rotation system and monitoring plan set out in the AMP. See Ex. A-3, at 2, 5. The agreement mandated that utilization of identified key streambank riparian plant species not exceed 30 percent (subject to adjustment by an approved activity plan), and limited total utilization of key plant species

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3/ The potential stocking level equation is expressed as follows: [Actual Use (AUM's)/Actual Utilization (i.e., weighted average percentage of forage utilization)] = [Grazing Capacity (AUM's)/Desired Average Utilization]. See Ex. A-2, Monitoring Plan at 7; see also Ex. A-9, at 55.

in the 2,493 acres of wetland riparian habitat to no more than 50 percent. (Ex. A-3, at 1.) The agreement established a 50 percent maximum utilization rate for key plant species in upland habitats, unless adjusted by an activity plan, and further provided that any increase or decrease in available forage would be divided proportionally among livestock, wild horses, and wildlife within the allotment. (Ex. A-3, at 2, 3, 5.) This provision corresponded to that found in the July 1982 Sonoma-Gerlach land use plan. See Ex. A-1, at 2.

The riparian utilization objectives established in the agreement were reiterated in a 1989 wildlife habitat management plan (Ex. A-4, at 8, 10) and a 1992 rangeland program summary update. (Ex. A-5, at 9.)

In 1991, BLM began formal reevaluation of the allotment, using data collected during the required monitoring. Throughout its reevaluation process, BLM solicited and received information and comments from interested parties, including State agencies. See Tr. 202-206; Exs. R-16, 17, 18, and 19. In the 1993 final reevaluation for the allotment, BLM concluded that some of the short term utilization objectives for the allotment were not being met (Ex. A-6, at 26-37) and identified two reasons for the over-utilization of the riparian forage: an excessive number of wild horses and poor livestock distribution. 4/ (Ex. A-6, at 37; Tr. 210.) Recommended stocking levels for livestock and wild horses were established to enable BLM to achieve allotment objectives. Although the reevaluation did not delineate BLM's carrying capacity calculations, it set forth BLM's finding that a total 18,481 AUM's were available on the allotment, 16,880 of which had been allocated. (Ex. A-6, at 39.) The reevaluation divided the allocated AUM's between livestock and wild horses, apportioning 8,318 AUM's to livestock and 8,568 AUM's to horses. (Ex. A-6, at 40.) The total authorized grazing use was further reduced to 12,727 AUM's by halving the authorized livestock use from 8,318 to 4,159 AUM's in recognition of the fact that only two of the four pastures were grazed each year. The remaining 4,159 AUM's were reserved by attributing them to the resting pastures. The reevaluation explained that the BLM chose not to allocate the unused AUM's in order to attain allotment objectives and achieve a thriving natural ecological balance in the allotment. Id.

In the final Multiple Use Decision, the Area Manager established new allotment objectives, modified other allotment objectives, altered the allotment's livestock management practices and grazing system, and determined the appropriate management level for wild horses. (Ex. A-7, at 1.)

4/ During its reevaluation BLM also determined that livestock use had remained constant at 4,159 AUM's during the evaluation period, wildlife use had been lower than projected (with the exception of 1990), and wild horse use had exceeded the recommended level during the entire period, with actual wild horse use estimated at 21,996 AUM's in 1991. (Ex. A-6, at 12, 37.) Actual wild horse use approached 25,416 AUM's in 1992. (Tr. 213.)

These changes were deemed necessary because the monitoring data analyzed in the reevaluation had revealed that the existing number of wild horses and the current management of livestock were contributing significantly to BLM's inability to meet the multiple use management objectives set out in the 1982 land use plan and the 1988 allotment agreement. Id. The revised allotment wide multiple use objectives included: a wild horse utilization objective of 20 percent in livestock rest pastures by July 15; a combined livestock and wild horse utilization objective on grass species, upland browse species, and meadows of 50 percent at the end of the livestock use period and 60 percent by February 28, the date considered to be the start of a new growing season; and a utilization objective on key streambank riparian plant species of 30 percent at the end of the livestock use period and 40 percent by February 28. (Ex. A-7, at 2.) The Multiple Use Decision stated that the combined carrying capacity for livestock and wild horses was 12,682 AUM's, with 4,114 AUM's allocated to livestock and 8,568 AUM's assigned to wild horses, but did not provide the derivation of those numbers. (Ex. A-7, at 7.)

The Area Manager retained the livestock allocation and basic four pasture rest-rotation grazing system established in the 1988 agreement, but slightly modified the dates of use for two of the pastures. (Ex. A-7, at 8-9.) As a means of improving livestock distribution, the permittees were required to herd livestock in a manner that would achieve the short term utilization objectives for streambank riparian, wetland riparian, and upland habitats. The Multiple Use Decision further directed the permittees to move livestock within the pasture or remove livestock from the pasture to assure that utilization in the area of the important streams would be limited to 30 percent of key species during livestock use periods (Ex. A-7, at 9) and provided that the streams would be fenced if implementation of the grazing strategy and reduction of wild horse numbers to the appropriate management level failed to keep utilization levels below 30 percent during combined livestock and wild horse use periods. (Ex. A-7, at 10.) The herding requirement was to be incorporated into the permittees' term permits. Id.

The Area Manager's Multiple Use Decision set the appropriate management level at 714 horses (8,568 AUM's), based on calculations from monitoring studies. The Multiple Use Decision stated that limiting wild horses to this number would result in a thriving natural ecological balance for the three herd management areas within the allotment. (Ex. A-7, at 11-12.) The Area Manager stated that, to achieve the appropriate management level, BLM would remove wild horses from the allotment through gathers every 3 years. (Ex. A-7, at 11.) The Multiple Use Decision further indicated that if wild horse utilization exceeded 20 percent on key species in resting pastures by July 15, the benefits of the rest treatment would not be realized, and the appropriate management level for wild horses would be adjusted. Id.

The State appealed the livestock portion of the Area Manager's Multiple Use Decision to an administrative law judge pursuant to 43 C.F.R.

§ 4.470 and the wild horse portion of that decision to this Board pursuant to 43 C.F.R. § 4.410. 5/ By order dated August 12, 1993, the Board referred the wild horse appeals to the Hearings Division for consolidation with the grazing appeals.

Judge Child held an evidentiary hearing in Reno, Nevada, on January 10 and 11, 1995. The State called one witness, Roy Leach, a Nevada Division of Wildlife supervising habitat biologist, who identified what he deemed to be shortcomings in BLM's management of riparian areas and errors in its carrying capacity calculations and allocations. Two witnesses testified for BLM: Rich Adams, a BLM supervisor range conservationist, who explained how the carrying capacity of the allotment had been calculated, and Bud Cribley, the Sonoma-Gerlach Resource Area Manager, who described the genesis of the challenged Multiple Use Decision and the rationale behind the carrying capacity computation and apportionment. The parties also introduced numerous exhibits and filed extensive post-hearing submissions.

In his Decision, Judge Child gave an extensive outline of BLM's carrying capacity and apportionment determinations, which were fully explained for the first time at the hearing: 6/

> In order to calculate the carrying capacity for the allotment, the BLM used the method described in the 1987 AMP. (Tr. 251-252; Ex. A-2.) This method provides a formula to determine the Potential Stocking Level (PSL), which is "the level of use that could be achieved on a management unit, at the desired utilization figure, assuming utilization patterns could be completely uniform." (Ex. A-2, Monitoring Plan p.7.) Although with slightly different wording, this formula is also found in BLM's Technical Reference 4400-7. (Ex. A-9 p.55.) What the formula essentially does is to compare the actual use in AUM's, and the utilization of the vegetative resource caused by that level of use, with the number of AUM's you would have to use to reach the desired utilization.
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> Technical Reference 4400-7 discusses the use of potential stocking level. The potential stocking level is the level of use that could be achieved if utilization were completely uniform, and is useful when assessing the benefits of improved distribution. (Ex. A-9 p.55.) In this case, the management actions in the decision were designed to achieve more uniform utilization and protect riparian areas. (Tr. 148-149.) The

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5/ The Sierra Club, Natural Resources Defense Council, and Wild Horse Organized Assistance also appealed the Area Manager's decision and participated in the hearing on the consolidated appeals. None of these Appellants appealed Judge Child's Decision.

6/ The Bureau had set out its stocking level calculations in its response to the wild horse decision appeals which were filed with the Board, but did not explain those computations. See Ex. A-8.

BLM did not assume perfectly uniform utilization, and it did not stock the allotment near what it determined the potential stocking level to be. (Tr. 148, 244-248.) Technical Reference 4400-7 does not require the BLM to use the formula for desired stocking level, rather than potential stocking level, to determine carrying capacity. (Tr. 253.) The methodology the BLM used to determine carrying capacity conformed to the requirements of Technical Reference 4400-7. (Tr. 252-253.)

In order to determine the utilization caused by the actual use, the BLM used a method known as weighted average utilization to determine actual utilization for the PSL formula. (Tr. 251, Ex. A-2, Monitoring Plan p.7, Ex. A-9 p.55, Ex. A-8.) In order to determine weighted average utilization, the BLM used "use pattern mapping" to determine the areas of various utilization classes on the allotment, i.e., no apparent use, slight, light, moderate, heavy, and severe. (Tr. 130-131; Ex. R-13.) Once the BLM calculated acreage for each utilization class, it averaged the moderate and heavy classes to get the weighted average utilization. (Tr. 131; Ex. A-9 pp. 51-53.) BLM did not include the no apparent, slight, and light utilization classes in the calculations, nor did it include the severe class, because it decided that using all of the use categories would distort the result. (Tr. 132.)

Once BLM had the weighted average utilization for each pasture in the Buffalo Hills Allotment, it then determined the actual use for each pasture. (Tr. 132; Ex. A-8.) After that, BLM determined what its desired utilization rate would be, which was the maximum utilization rate BLM would allow on the allotment. (Tr. 230.) BLM determined the desired utilization rate to be 60%, in accordance with the Nevada State Handbook on Best Management Practices. (Tr. 233-234; Ex. R-21.) This number shows up as 0.6 in the carrying capacity calculation. (Tr. 230-231; Ex. A-8.) In the 1988 agreement, the objective had been 50% throughout the livestock use period. (Tr. 231-232.) However, because wild horses are on the allotment year-round, and because the Re-evaluation process was considering wild horse use for the first time, the BLM had to determine what the desired utilization should be when the November 1 to February 28 period was included. (Tr. 231.) Because November 1 to February 28 is the dormant season for plants, and BLM technical references and the Nevada State Handbook on Best Management Practices allow 60% utilization in the dormant season, BLM made its decision to set the desired utilization rate at 60% for the allotment. (Tr. 232.)

The 1988 agreement and the 1992 Rangeland Program Summary (RPS) both provided utilization objectives which consisted of 30% for streambank riparian and 50% for upland habitat. These documents also stated that the objectives could be adjusted by an "approved activity plan." (Tr. 237-238; Ex. A-3 p.1, Ex. A-5

p.9.) An Allotment Management Plan is an approved activity plan, and the Decision under appeal was the functional equivalent of an approved activity plan. (Tr. 237.) Therefore, BLM decided that the terms of the 1988 agreement and the 1992 RPS provided a basis for adjusting the utilization objectives in the Multiple Use Decision. (Tr. 238-239.)

The Draft Sonoma-Gerlach Grazing Environmental Impact Statement contained a list of plant species and recommended utilization levels for those species. [7/] (Ex. [A-10] p. I-7.) The document stated that the recommended use levels could be exceeded under intensive management, and the Buffalo Hills Allotment was under intensive grazing management. (Tr. 234.)

BLM decided not to use 30% utilization, which was the desired utilization in the riparian areas, as the desired utilization for the whole allotment. (Tr. 239-240.) The reason given was that the riparian areas represent less than one percent of the allotment, and the BLM chose to limit the utilization on those areas by requiring herding and fencing. (Tr. 27, 149; Ex. A-7 p. 10.)

Once the BLM had the actual use, weighted average utilization, and desired utilization, it put these numbers into the Potential Stocking Level equation to determine the carrying capacity for each pasture. (Tr. 133; Ex. A-8.) At that point, the BLM had to determine what the proper proportion of horses and livestock was for each pasture, in order to determine how to allocate the AUM's for each pasture. (Tr. 134; Ex. A-8.) The only guidance for how to allocate AUM's was found in the Land Use Plan, which stated in part: "After the fifth year adjustments, continue monitoring and if adjustments in addition to the fifth year adjustments are required, adjust livestock, wild horses and wildlife proportionately based on forage availability." (Tr. 254.) Based on this limited guidance, BLM decided that the best way to apportion the AUMS was to apply the proportion of livestock and wild horse numbers in the Land Use Plan. (Tr. 255.) However, because some of the livestock permits had been eliminated, the BLM decided to go with the livestock numbers in the 1988 agreement rather than using permits which no longer existed to create the proportions. (Tr. 256.)

Once they had the carrying capacities and proportions for each pasture, BLM could then determine what the maximum number of wild horses and livestock should be for each pasture. By adding

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7/ The Draft Sonoma-Gerlach Grazing Environmental Impact Statement analyzed the environmental impacts of the 1982 land use plan.

> up the totals for each pasture, the BLM determined the carrying capacity for wild horses on the allotment to be 8,568 AUMS. (Tr. 244; Ex. A-6 p. 39.) * * *.
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> BLM estimated the total carrying capacity for livestock on the allotment to be 9,913 AUMS. (Tr. 245.) * * *.
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> Using the carrying capacity calculations based on the formula for potential stocking level, BLM calculated the total carrying capacity to be 18,481 AUMS. (Tr. 244; Ex. A-6 p.39.) However, the carrying capacity in the Multiple Use Decision was 12,682 AUMS. (Ex. A-7 p.7.) BLM arrived at this lower figure because it did not allocate all of the AUMS available to livestock. (Tr. 244-248.) Because the allotment was under a rest-rotation system in which only two of the four pastures were being used each year, BLM determined that only half of the AUMS were available for livestock each year. (Tr. 245-246.) BLM could have allowed the full 9,913 AUMS on two pastures each year, but decided not to do that because of the critical wildlife habitat values on the allotment. (Tr. 246.)
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> By allocating half of the AUMS each year, 4,957 AUMS were available for two pastures each year. (Tr. 246.) However, the active preference was only 4,114 AUMS. (Ex. A-7 p. 7; Tr. 246.) BLM again could have allocated the additional AUMS, but decided not to do so for three reasons: 1) short-term objectives for riparian areas were not being met, 2) there were too many wild horses, and 3) the BLM wanted to make sure that the herding system which was proposed to improve distribution would actually work. (Tr. 247.) Therefore, the BLM did not increase the active preference for livestock, and arrived at a carrying capacity of 12,682 AUMS by adding the livestock preference to that for wild horses. (Tr. 247-248.) * * *.

(Decision at 5-7.)

Judge Child affirmed BLM's carrying capacity determination. He first found that BLM's reliance on the potential stocking level equation was proper because, even though current utilization was unevenly distributed, the Area Manager's Multiple Use Decision imposed rigorous new requirements designed to improve distribution. (Decision at 8-9.) Judge Child next evaluated BLM's application of the potential stocking level equation. He determined that BLM had accurately ascertained the actual use of the allotment by livestock from the livestock actual use reports and the use by wild horses from wild horse census numbers which had been adjusted to coincide with the time period covered by the actual utilization figures. (Decision at 9.) He also sustained BLM's selection of the weighted average utilization as the actual utilization figure for the allotment. Id.

Judge Child endorsed BLM's adoption of 60 percent as the desired utilization for the allotment despite the 50-percent number found in earlier documents. He noted that the drafters of the earlier documents had considered only livestock use from the beginning of March through the end of October, and the Multiple Use Decision addressed wild horse use and desired utilization numbers for the entire year for the first time. He found that, because the period between the end of October and February 28 was the dormant season for plants and the Nevada State Handbook on Best Management Practices allowed 60-percent utilization during the dormant season, BLM reasonably set 60 percent as the desired allotment utilization level. (Decision at 9-10.) After having approved BLM's calculations for each of the components of the potential stocking level equation, i.e., actual use, actual utilization, and desired utilization, Judge Child upheld the computed carrying capacity. He also found BLM's decision to stock the allotment at a level lower than the calculated carrying capacity to be reasonable in light of the rest-rotation grazing strategy, the time required to reduce wild horse numbers to the appropriate management level, the unmet riparian objectives, and the as yet unproven efficacy of the proposed herding to protect riparian areas. (Decision at 10.) He concluded that the Area Manager had not acted arbitrarily or capriciously or otherwise abused his discretion in calculating the carrying capacity for the allotment, and had not violated any of the grazing regulations in 43 C.F.R. Part 4100. Id. Accordingly, he affirmed the Area Manager's carrying capacity determination.

Judge Child also ratified BLM's allocation of the available AUM's between livestock and horses. He recognized that, despite BLM's acknowledgment that, pursuant to the 1982 land use plan, the carrying capacity should be apportioned on the ratio of the wild horses and livestock set out in that plan, the Area Manager had used the reduced livestock numbers existing after the November 1982 permit cancellations to determine the wild horses to livestock ratios. (Decision at 11.) However, given that the number of wild horse on the allotment had increased since the land use plan had been implemented and the livestock numbers had decreased, Judge Child found that it was not unreasonable to decrease wild horse numbers without decreasing the livestock. Id. He noted that the State's alternative suggestions regarding how the available AUM's could have been dispensed did not undermine the reasonableness of the method selected by BLM. Id. He affirmed the Multiple Use Decision. 8/

[1] On appeal to this Board, the State argues, as an initial matter, that the Multiple Use Decision was fatally flawed because it omitted an

8/ Judge Child specifically rejected the State's contention that not all of the riparian projects listed in the habitat management plan had been developed, noting that the habitat management plan had explicitly recognized that consummation of those projects depended on manpower and funding being available.

explanation of the derivation of the carrying capacity determination for the allotment, thus depriving the State of the ability to meaningfully participate in the development of the Multiple Use Decision or adequately challenge that decision on appeal. The State further maintains that BLM's attempt to remedy that omission by giving an explanation of its carrying capacity calculations at the hearing does not salvage the Multiple Use Decision, regardless of the adequacy of the explanation. In response, BLM submits that no grazing regulation or BLM policy requires full explanations of carrying capacity determinations in decisions and that, in any event, the lack of a detailed explanation for the carrying capacity determination in the Multiple Use Decision did not impair the State's ability to challenge the decision.

It is incumbent upon BLM to ensure that its decision is supported by a rational basis which is set out in the written decision and demonstrated in the administrative record accompanying that decision. Kanawha & Hocking Coal & Coke Co., 112 IBLA 365, 368 (1990); Eddleman Community Property Trust, 106 IBLA 376, 377 (1989); Roger K. Ogden, 77 IBLA 4, 7, 90 I.D. 481, 483 (1983). Parties who are affected by a BLM decision deserve a reasoned and factual explanation of the rationale for the decision and must be given a basis for understanding it and accepting it or, alternatively, appealing and disputing it. Exxon Company, U.S.A., 113 IBLA 199, 205 (1990); Kanawha & Hocking Coal & Coke Co., supra; Eddleman Community Property Trust, supra; Southern Union Exploration Co., 51 IBLA 89, 92 (1980), and cases cited therein. In this case the Area Manger's decision did not contain the carrying capacity calculations for the allotment. 9/ However, the appeal documents the State filed with Judge Child clearly reveal that the State was sufficiently cognizant of the basis for the decision to appeal and present a rebuttal of BLM's methodology. Thus, it is obvious from the record that the State overcame any difficulty it may have initially encountered when BLM failed to present an adequate explanation of the basis for its decision and presented an informed and organized appeal, both to Judge Child and to this Board. We do not find that the State has been unduly prejudiced by BLM's initial omission. See Union Oil Co. Of California, 116 IBLA 8, 16-17 (1990). Accordingly, we reject the State's argument that the Area Manager's decision must be reversed for failure to include the carrying capacity calculations.

The State disputes Judge Child's conclusion that the Area Manager's decision was rational and consistent with law. According to the State, the proof that BLM's carrying capacity determination is implausible and irrational is illustrated by BLM's rejection of the utilization rate determination derived from the utilization equation and substitution of a lower number, which justifies BLM's conclusion that grazing will not cause

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9/ During the hearing, BLM signified its intent to include carrying capacity calculations in future allotment reevaluation decisions. See Tr. 341-342. We applaud this action.

resource damage. The State finds BLM's mathematical calculations contrary to law and unreasonable. It disagrees with Judge Child's approval of the methodology adopted by BLM, contending that when BLM improperly averaged riparian utilization with upland utilization it diluted the serious overuse of riparian vegetation and erred by failing to use streambank riparian objectives as the desired utilization figure.

The State submits that the unequal distribution of livestock on the allotment precludes application of the potential stocking level equation. It asserts that BLM's use of the potential stocking level equation, which relies on the weighted average utilization, was improper because it produces the level of use that could be achieved if utilization patterns were uniform, when it is undisputed that utilization of the allotment is uneven and concentrated in riparian areas.

We are urged to find that Judge Child also incorrectly endorsed BLM's use of 60 percent as the desired utilization level when BLM's own manual dictates that the 30-percent utilization level for the key streambank riparian management area controls the overall determination of the allotment's carrying capacity. The State rejects BLM's dependence on the Nevada State Handbook of Best Management Practices as justification for adopting the 60-percent utilization figure. It argues that this utilization figure is not applicable to important riparian species and that no justification exists for accepting the higher utilization contained in a generic handbook rather than the lower, species- and allotment-specific figures developed through the land use planning process. The State similarly objects to BLM's reliance on livestock herding as the means to achieve the desired riparian objectives, stating that the herding outlined in the 1988 allotment agreement had proven to be ineffective in controlling excessive riparian utilization. The State maintains that BLM has no authority to ignore land use plan objectives for riparian areas just because they cover only a small percentage of the allotment, and that BLM's omission of riparian objectives when doing the carrying capacity calculations was arbitrary.

The State further alleges that Judge Child erred in affirming the Area Manager's decision because the authorized livestock use will exceed the allotment's carrying capacity for years into the future. It bases this assertion on BLM's admissions that wild horse numbers will remain excessive until completion of all the necessary gathers and that, in the interim, total wild horse and livestock use will exceed carrying capacity. The State asserts that this use violates the regulatory mandate that authorized livestock use not exceed the livestock carrying capacity.

Finally, the State contends that Judge Child erred as a matter of law by finding that BLM had the discretion to amend the land use plan's apportionment of grazing reductions between wild horses and livestock. Citing the land use plan provision directing that livestock and wild horse use be adjusted proportionately based on forage availability, the State submits that BLM's allocation of adjustments was not proportional

because, although BLM significantly reduced wild horse numbers, livestock AUM's remained unchanged. The State maintains that BLM does not have the discretion to unilaterally modify a land use plan and argues that Judge Child's decision must therefore be reversed.

In its Answer, BLM insists that Judge Child's determination that its carrying capacity determination was reasonable and complied with the grazing regulations was reasonable and supported by the facts. The Bureau contends that the Area Manager's explanation of any difference between the strictly calculated carrying capacity and the carrying capacity used in the decision was rational and denies the State's allegation that the calculated stocking level had no relevance to the final carrying capacity determination, pointing out that the Area Manager allocated all the calculated AUM's assigned to wild horses. It states that the Area Manager's decision to not allocate the full calculated carrying capacity to livestock fell within his discretion and reflected his desire to protect and improve the forage resources. The Bureau asserts that the State's insistence on making the determination by strict application of mathematical formulae would increase livestock numbers and fails to consider the deference traditionally afforded to experience-based judgmental calls in BLM grazing decisions.

The Bureau argues that the State's espousal of the strict application of the stocking level equation, focusing only on utilization of a single management area rather than considering the allotment as a whole, does not render BLM's method unreasonable. It notes that no BLM technical manual requires use of a specific equation or the result produced by any single formula, and that the monitoring plan made a part of the 1987 AMP specifically authorized the use of the potential stocking level equation it employed. Admitting that distribution was not uniform when the carrying capacity was analyzed, BLM points to that portion of its decision adopting rigorous steps to improve and assure a more even distribution, thus rendering any stocking level equation which assumes immutable distribution patterns less applicable. The Bureau disputes the State's allegation that the only way to meet riparian objectives is by reducing livestock numbers, restating its conclusion that the rigorous herding and fencing requirements imposed on the permittees will ensure that utilization objectives will be met on riparian areas.

The Bureau also contends that the State has not shown that it erred when it used the 60-percent desired utilization level, rather than the 30-percent figure appropriate for riparian areas, especially when taken in the context of the other strategies adopted by the Area Manager to meet the riparian utilization objectives. It asserts that the lower percent utilization numbers found in earlier management plans and livestock agreements do not render the 60-percent figure inappropriate because those documents specified that the utilization level could be adjusted in an approved activity plan and could be exceeded under intensive management, such as that called for in the allotment. The Bureau explains that the primary reason for the increased desired utilization level was the establishment of

the wild horse appropriate management level for the allotment (a determination which was made for the first time in conjunction with the decision), and the Area Manger's consideration of wild horse use during the plant dormant season. According to BLM, it was important that the lower objectives contemplated use ending near the end of October when livestock grazing ceased, while the wild horses remained on the allotment during the November through February plant dormant season. The Bureau maintains that the 60-percent utilization it adopted is allowed in the dormant season under the Nevada State Handbook of Best Management Practices and properly accounted for year round wild horse use. The Bureau further submits that the newly imposed mandatory herding requirements calling for removal of livestock from riparian areas when there has been 30-percent riparian utilization will adequately protect the riparian areas.

The Bureau discounts the State's contention that the decision improperly allows the livestock carrying capacity to be exceeded, noting that, although the wild horse numbers will exceed the appropriate management level until gathers are completed, the livestock numbers fall well within both the calculated 9,913 AUM livestock carrying capacity and the 4,114 AUM livestock carrying capacity. According to BLM, the State's apparent goal of totally banning livestock use any time wild horse numbers surpass the appropriate management level would unjustly punish permittees for situations beyond their control, and is not required by the regulations.

Finally, BLM states that the Area Manager properly allocated forage between livestock and wild horses. Acknowledging that the Area Manager's decision reduced wild horse numbers but did not lower livestock numbers, BLM contends that this decision must be considered in the context of the history of the allotment. Wild horse numbers had dramatically increased on the allotment since 1982, when the land use plan was implemented, and during the same period livestock usage significantly decreased. The Bureau maintains that the Area Manager's decision to curtail only wild horse numbers and impose restrictions on livestock distribution rather than reduce livestock numbers was reasonable. Accordingly, BLM urges that Judge Child's Decision be affirmed.

[2] With respect to grazing districts on public lands, section 2 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315a (1994), authorizes the Secretary to "make such rules and regulations" and to "do any and all things necessary to * * * insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, [and] to provide for the orderly use, improvement, and development of the range." Title IV of the Federal Land Policy and Management Act of 1976, amending the Taylor Grazing Act, reiterates the Federal commitment to protecting and improving Federal rangelands. See 43 U.S.C. §§ 1751-1753 (1994); see also Public Rangelands Improvement Act of 1978, 43 U.S.C. §§ 1901-1908 (1994).

Implementation of the Taylor Grazing Act, as amended, 43 U.S.C. §§ 315, 315a-315r (1994), is committed to the discretion of the Secretary of the Interior, through his duly authorized representatives in BLM.

West Cow Creek Permittees v. BLM, 142 IBLA 224, 235 (1998); Kelly v. BLM, 131 IBLA 146, 151 (1994); Yardley v. BLM, 123 IBLA 80, 89 (1992), and cases cited therein. The BLM enjoys broad discretion in determining how to manage and adjudicate grazing preferences. West Cow Creek Permittees v. BLM, supra; Riddle Ranches, Inc. v. BLM, 138 IBLA 82, 84 (1997); Yardley v. BLM, 123 IBLA at 90. Under 43 C.F.R. § 4.478(b), BLM's adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with Departmental grazing regulations found at 43 C.F.R. Part 4100. By adopting this standard, the Department has considerably narrowed the scope of review of BLM grazing decisions by an administrative law judge and by this Board, authorizing reversal of such a decision as arbitrary, capricious, or inequitable only if it is not supportable on any rational basis. West Cow Creek Permittees v. BLM, 142 IBLA at 236; Riddle Ranches, Inc. v. BLM, 138 IBLA at 84. An appellant seeking relief from a grazing decision reached in the exercise of BLM's administrative discretion bears the burden of showing by a preponderance of the evidence that the decision is unreasonable or improper. West Cow Creek Permittees v. BLM, supra; Kelly v. BLM, supra. Accordingly, a BLM determination of the carrying capacity of an allotment will not be disturbed in the absence of a showing, by the preponderance of the evidence, that the determination is unreasonable or improper.

The State has not demonstrated that BLM's carrying capacity determination was unreasonable or violated Departmental grazing regulations. The State objects to BLM's selection of the potential stocking level equation for estimating the allotment carrying capacity because the uneven utilization pattern on the allotment precludes use of that stocking level equation, and the weighted average utilization component of that equation minimizes the significance of the heavy riparian utilization. The potential stocking level reflects the level of use that could be achieved, assuming uniform utilization patterns, and is most useful when assessing the benefits of improved distribution and changes in livestock numbers. See Ex. A-9, at 55. In the past, the allotment has suffered uneven livestock distribution. The Area Manager's decision imposes strict new herding requirements and grazing limitations designed specifically to improve livestock distribution and protect the sensitive riparian areas. Although the State asserts that herding has previously been shown to be ineffective in controlling livestock distribution, neither the 1987 AMP, which identified herding as a method of distributing and controlling livestock, nor the 1988 allotment agreement contained the directives explicitly mandating removal of livestock from riparian areas when there has been 30-percent riparian utilization found in the Area Manager's decision. The livestock management actions imposed by the decision were devised to achieve uniform livestock distribution. The State has not shown that, when imposed, the desired result will not occur. Therefore, the State has not shown that BLM's employment of the potential stocking level equation has no rational basis. Nor has the State demonstrated error in BLM's use of the equation's weighted average utilization factor. The Bureau's selection of a potential stocking level equation fell well within its discretionary authority.

We similarly find that BLM did not abuse its discretion when it adopted 60 percent as the desired average utilization for the allotment, as a whole. The State correctly notes that previous planning documents established lower utilization objectives for the allotment. However, those documents also stated that the utilization objectives were subject to adjustment in approved activity plans. See, e.g., Ex. A-3, at 1; Ex. A-5, at 9. When taken in conjunction with the new restrictions found in the decision, BLM's explanation that the upward adjustment arose from its first time consideration of year round wild horse use and the Nevada State Handbook's endorsement of 60-percent utilization during plant dormant season amply support the reasonableness of BLM's decision. The mandate that livestock be removed from riparian areas upon reaching 30-percent utilization of riparian areas (1 percent of the total area) undercuts the State's claim that raising the desired average utilization for the allotment as a whole violates the land use plan objectives to improve riparian areas. Thus, the State has not shown that BLM abused its discretion in setting 60 percent as the desired average utilization for the allotment as a whole.

We disagree with the State's supposition that when the Area Manager adopted a lower carrying capacity than the calculated combined carrying capacity of the allotment, he conceded that his use and application of the stocking level equation was erroneous. No regulation or policy mandates that an allotment's carrying capacity be the calculated stocking level, but the Area Manager did, in fact, allocate all the calculated AUM's apportioned to wild horses. The Area Manager chose not to allot all the computed livestock AUM's because half the pastures were always in rest-rotation, short term riparian objectives had not been met, an excess number of wild horses were on the allotment, and the newly-imposed more restrictive herding system had not yet been tested and proven to be effective. We find that the Area Manager's decision to set the carrying capacity at a level below the calculated stocking level does not repudiate his use of the potential stocking level equation. It demonstrates his commitment to meeting riparian objectives and improving riparian habitat. These are the same considerations animating the State's participation in this appeal.

We reject the State's argument that, accepting the validity of BLM's carrying capacity calculation, the Area Manager's decision violates 43 C.F.R. § 4130.6-1(a) because total wild horse and livestock use on the allotment will exceed the combined carrying capacity. Although 43 C.F.R. § 4130.6-1(a) mandates that authorized livestock use not exceed livestock carrying capacity, it does not address excessive use by wild horses. The livestock use authorized in the Area Manager's decision does not surpass the livestock carrying capacity and therefore fully complies with the applicable regulations.

[3] Finally, the State claims that BLM's apportionment of the available AUM's between livestock and wild horses, which reduced wild horse numbers but allowed livestock numbers to remain the same, ignored the 1982 land use plan's directive that livestock and wild horse use be adjusted proportionately based on forage availability. The Area Manager

interpreted this general guideline as directing that available forage be apportioned based on the ratio of livestock and wild horses in the land use plan, which was modified to reflect the dramatic decrease in livestock numbers when the largest grazing permit in the allotment was cancelled in November 1982. A comparison of the livestock ratio existing in 1982 when the plan was drafted discloses that the decision actually increased the proportion of the currently available forage allocated to wild horses. Although the State interprets the land use plan guidance differently than the Area Manager, the existence of an alternative, supportable method for apportioning the available forage does not mandate rejection of BLM's methodology. See Animal Protection Institute of America, 122 IBLA 290, 295 (1992). Because the State has not shown that the Area Manager's interpretation is unreasonable, we find no error in the allocation of the allotment carrying capacity.

The State's appeal rests on its belief that the only way to meet riparian objectives on the allotment is to reduce livestock usage. The Area Manager determined that the same objectives could be met through improved livestock distribution and concurrent reduction of the wild horse population. The Department is entitled to rely on the reasoned analysis of its experts in matters within the realm of their expertise, and a party challenging BLM's evaluation must do more than simply offer a contrary opinion. See West Cow Creek Permittees v. BLM, 142 IBLA at 238, and cases cited. The State has not shown that the Area Manager erred when opting for improved livestock distribution rather than livestock reductions as the means for achieving riparian objectives on the allotment. Therefore, we find no error in the Area Manager's determination of the allotment's carrying capacity or in his allocation of the available AUM's between livestock and wild horses.

Without further belaboring this decision with additional references to and discussion of the parties' contentions regarding errors of fact and law, except to the extent they have been expressly or impliedly addressed in this decision, they are rejected on the ground that they are, in whole or in part, contrary to the facts and law or are immaterial. See National Labor Relations Board v. Sharples Chemicals, Inc., 209 F.2d 645, 652 (6th Cir. 1954).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Child's Decision is affirmed.

R.W. Mullen
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge